THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.7812 OF 1997

Date: 19-12-2006

Between:
M.Chinna Obula Reddy,
S/o M.Subba Reddy,
Aged 70 years, Kudumuluru village,
Vontimitta Mandal, Cuddapah District.

... Petitioner.

And

1.The Special Collector,
In-charge Somasila and
Telugu Ganga Project,
Nellore and Joint Collector,
Cuddapah and 3 others.

... Respondents.

* * *

ORDER:

Heard Sri G.Ramesh Babu, learned counsel representing the writ petitioner and learned Assistant Government Pleader for Land Acquisition.

2. The writ petition is filed for a writ of Mandamus declaring action of the respondents in not acquiring and assessing damage caused to the petitioner fruit bearing orange trees numbering 550 in S.Nos.77 and 80, Kudumuluru village, Vontimitta Mandal, Cuddapah District, as illegal, improper and unjust; and

consequently direct the respondents to acquire the structures including the fruit bearing trees by assessing the damage and pass such other suitable orders.

3. It is stated that the petitioner and his family members are the owners of the land in survey Nos.77, 80, 188/1 and 189 of total extent of Ac.8-60 cents and they have been eaking out their livelihood by irrigating the said lands by the water in the well and they have no other source of income for their livelihood. It is stated that the petitioner planted 550 Orange trees in S.Nos.77 and 80 in the year 1986 by investing huge amounts and they were fruit bearing stage in the year 1991. While the matters stood thus, the land acquisition authorities acquired the lands and structures in the neighbouring village and paid compensation excluding the Kudumuluru village of Vontimitta Mandal on account of miscalculation of estimating contour level due to negligence of engineering department. It is also stated that due to their negligence, the Orange garden and paddy crop of the petitioner drowned due to backwaters of Somasila project in the submerged area had flooded the un-acquired area of the village during November 1990 resulting irreparable loss due to water got lodged in the fields. The petitioner represented to all the concerned authorities to pay compensation for the said damages by acquiring the said lands and the structures and pay compensation as was paid to the owners in the neighbouring villages. It is also stated that the petitioner got issued a legal notice on 29.4.1991 to the respondents requesting them to estimate loss and damage sustained by the petitioner and arrange payment of Rs.12,00,000/-

. Pursuant to the said legal notice, the first respondent issued a Memo No.D.Dis.1958/91, dated 14.10.1991, with an endorsement that the engineering department is concerned authority in this matter and advised to approach the Superintending Engineer, Somasila Project, Nellore. Accordingly, the petitioner approached the said authority and requested him to estimate the damage sustained by him. In view of the repeated representations, the first respondent issued 4(1) notification, which was published on 20.1.1996 in daily newspapers acquiring the lands of Kudumulur village including the lands of the petitioner in S.Nos.77 and 80. The first respondent issued a draft declaration dated 17.1.1997 stating that the possession of the lands will be taken within 15 days from the date of declaration, but the first respondent did not mention the structures existing on the land i.e., 550 Orange plantation as reported by the Special Deputy Tahsildar on his personal inspection. It is also stated that the petitioner made a representation to include the structures on the said lands and pass award. Though the petitioner had gone round the offices of the respondents since February 1996 onwards, they did not hear the words of the petitioner and issued declaration on 17.1.1997 without including the said trees in the land in the survey numbers aforesaid. It is also stated that the petitioner raised 550 Orange plantations in survey Nos.77 and 80 of Kudumulur village, Vontimitta Mandal, Cuddapah District during the year 1986. In pursuance of notice, the Special Deputy Collector (Land Acquisition), Somasila project, unit IV, Rajampet, Cuddapah District addressed a letter in Ref.C.348/91, dated 12.8.1991 to the

first respondent with a request to address letter to the Assistant Director (H), Telugu Ganga Project for estimating the loss of plantation in survey Nos.77 and 80 along with the record of enquiry conducted by the Special Deputy Tahsildar had been placed before the first respondent for necessary action. It is stated that after repeated persuasions, the first respondent acquired the land, but not to the existing Orange trees in S.Nos.77 and 80 of Kudumuluru village. Several other factual details also had been narrated in the affidavit filed in support of the writ petition.

4. The report in Ref.C.348/91, dated 12.8.1991 addressed by the Special Deputy Collector (L.A.), Somasila Project, Unit-IV, Rajampet to the Special Collector, Telugu Ganga Project, Nellore, reads as hereunder.

"REVENUE DEPARTMENT

From
Sri P.Lakshminarayana,
Spl. Dy. Collector (L.A.)
Somasila Project, Unit-IV,
Rajampet.

To
The Special Collector,
Telugu Ganga Project,
Nellore.

Ref.C.348/91, dated 12.8.91.

Sir,

Sub:- L.A. S.S.P. Unit-IV, Rajampet-
Vontimitta Mandal, Kunumalur village-
S.Nos.77, 80, 188/1 and 189 measuring
5.08 acres Orange garden- effected and
damaged by Somasila water in November
1990- Compensation demanded enquiry
report- Reg.

Ref:- 1.D.O. Rc.No.C2-1958/91 of the Spl.
Collr. TGP. Nellore.

2. Report of the SDT, Rajampet, dt.1.8.91.

* * *

I submit that the notice issued by the Advocate Sri Sambasivareddy and D.Nageswara Rao of Cuddapah u/s 80 of CPC received with Spl. Collector refs. Cited has been enquired into by the Spl. Dy. Tahsildar, Rajampet.

The main contents of the notice u/s.80 of the CPC issued by the advocate are their client Sri Mamidi Chinna Obula Reddy and his family members which is a middle class family of Kudumalur (v) has raised Orange gardens (550 trees). Over an extent of 5-00 acres in S.No.77, 80, 188/1 and 189 of Kudumalur (v) which is a chief source of livelihood for the entire family. The land acquisition authorities have acquired the neighbouring villages (lands and structures) and compensation paid excluding part of Kudumalur (v). On account of wrong calculation and estimates of contour level and negligence by the Engineering Dept., the orange garden and paddy crop of Sri M.C.Chinna Obula Reddy was drowned in the back waters of Somasila Project during November, 1990, resulting irreparable loss and requested compensation of Rs.12/- lakhs on sympathy grounds.

The Spl. Dy. Tahsildar who visited the village on 1.8.91 along with the Spl. Surveyor inspected the lands belonging to the claimant of the advocates and enquired the respectable ryots of the same village. The Spl. Dy. Tahsildar reported that Sri M.Chinna Obula Reddy has raised Orange plantation in S.Nos.77 and 80 of Kudumalur village during 1986. The following are existing on ground in S.Nos.77, 80, 188/1 and 189 of Kudumalur village.

S.No.	Extent	Extent of Orange plants
77	4-38	132 plants were planted over an

		extent of 2.00 acres. They are now dried.
80	2-28	135 plants were planted over an extent of 2-28 cents. They are dried.
188/1	1-02	Citrus garden over an extent of 0-30 cents in existence. It is fruit bearing. No damage caused.
189	0-92	Citrus garden over an extent of 0-80 cents in existence. It is fruit bearing. No damage caused.

The contention of the Advocates that Orange garden consisting 550 trees in S.Nos.77, 80, 188/1 and 189 of Kudumalur (v) which is the only chief source of livelihood is not based on facts as the Orange garden is tender plantation (Non-fruit bearing stage) giving no yield. The client of the Advocate admitted the above fact by himself during the enquiry. The another contention is that their client has suffered a irreparable loss due to back waters of Somasila Project and demanding Rs.12/- lakhs as compensation is also not based on facts and figures as the Advocates themselves admitted in para 3 of the notice that the claimant is a middle class farmer. It is not reasonable to claim Rs.12 lakhs for non-fruit bearing trees covered by 4.00 acres.

It is correct to say that the Orange garden was damaged in S.Nos.77 and 80 of Kudumalur (v) by the backwater of S.S.P. but there is no damage to citrus trees in S.No.188/1 and 189. The damage caused to orange plantation is not so high as presumed by the Advocates. I request that the Asst. Director (H) T.G.P., Nellore may be addressed for estimating the loss of plantation in S.Nos.77 and 80, the record of enquiry submit herewith connected by the Spl.Dy. Tahsildar is submitted herewith

for kind perusal of the Special Collector.

Encl: Record of enquiry. Yours faithfully,

Spl. Dy. Collector,
L.A., Somasila Project,
Unit-IV, Rajampet."

It may be pertinent to note that the said report specifically refers to certain plantations in the respective survey numbers.

5. In the counter-affidavit filed by respondent No.1 the same had been specifically denied. It is also further averred that the said alleged trees were not in existence on the agricultural lands at the time of inspection of the Special Deputy Collector/Land Acquisition Officer for including in D.N. proposals and the stand of the petitioner relating to causing of damage and other aspects also had been narrated. Specific stand is taken that the structures, trees etc., in existence prior to the inspection of the Land Acquisition Officer or which were existing after the inspection of the Land Acquisition Officer will not be brought to D.N. under Section 4(1) of the Act. The Land Acquisition Officer had inspected the lands in question along with other patta lands on 17.12.1995 and 11.12.1995 and verified structures, features etc., existing on the patta lands, prepared inventory of them and submitted D.N. proposals to the Special Collector, Telugu Ganga Project, Nellore, the first respondent herein for approval. According to the inspection notes of the then Special Deputy Collector/Land Acquisition Officer, dated 17.12.1995, 11.12.1995, there were no orange trees existing on the lands in survey Nos.77

and 80. Certain other factual details also had been narrated. Further in paragraph 4 of the counter-affidavit it is specifically averred that as per the instructions of the Special Deputy Collector, the Special Deputy Tahsildar had inspected the patta (Agricultural) lands and structures etc., existing thereon along with Special Revenue Inspector and Special Surveyor and prepared inventory of structures etc., Reach wise and survey number wise for Reach number V and VII of Kudumulur village and submitted the same along with his report to the Special Deputy Collector (L.A.O.). Soon after receipt of his report, the then Special Deputy Collector (L.A.O.) had proceeded to the village and inspected all the patta (agricultural) lands in respect of Reach numbers V and VII of Kudumulur village and also the structures, features etc., existing there on 17.12.1995 and 11.12.1995, noted each and every structure, which were actually existing at the time of his inspection, and submitted D.N. proposals to the Special Collector, who is first respondent herein, for approval and the petitioner had not made any representation to the Special Deputy Collector (L.A.O.) who is not respondent herein, from the date of publication of D.N. till to the date, to include Orange trees in the D.N. and pass award. The following are the only structures, features, trees, existing on the patta (Agricultural) land as on the date of inspection of the Special Deputy Collector, L.A.O., i.e., on 17.12.1995 and 11.12.1995. Except this, there were no other structures/trees existing on the schedule lands pertaining to Reach No.V and VII of Kudumulur village.

S.No	Sy.No.	Classi-fication	Name of the petitioner and enjoyer	Extent in acres	Type of structures/ Trees etc.,
1	77	G.D.	Pattedar Mamidi Obula Reddy Mamidi Subba Reddy Enjoyers Paturu Vemul Reddy Mamidi Vemakka Mamidi Chinna Obula Reddy Mamidi Pedda Obula Reddy	4-38	Arable
2	80	G.D.	Pattadars Mamidi Subba Reddy Mamidi Obula Reddy Enjoyers Mamidi Chinna Obula Reddy Mamidi Vemakka -	2.28	Arable
3	188/1	G.D.	Pattadars Kudumulur Abbireddy Mamidi Narasa Reddy Mamidi Pitchaiah Enjoyers Mamidi Narasa Reddy MamidiChinna Obula Reddy Kudumulur Chenchu Nagireddy -	1.02	Arable 36 Cheeni

4	189		Pattadars Kudumulur Abbireddy Mamidi Narasa Reddy Mamidi Pitchaiah Enjoyers Kudumulur Chenchu Nagireddy Mamidi Chinna Obula Reddy	0.92	Arable 2 Indigo vats 45 Cheeni trees 2 soap nut trees

It is also further stated that the Orange trees which were said to have been drowned will not be taken for inclusion in the D.N. or D.D. under Section 4(1) and 6 of the Act as they were not existing on the ground at the time of inspection of the lands by the Special Deputy Collector. It is also averred that as per the Act, the structures, features, trees etc., which were existing as on the date of inspection of Land Acquisition Officer/Special Deputy Collector will only be taken into account and the same will be included in D.N./D.D. proposals and submitted to the Special Collector for approval. As per the Act the structures, features, trees etc., must be in existence on the ground from the date of inspection of Land Acquisition Officer till the compensation is paid to the awardee. Eventhough the structures/trees etc., are included in the D.N. and D.D. and published by all modes, if they are damaged in the middle of the process, compensation will not be paid for such structures, trees etc., at any circumstances, therefore, the question of including the trees etc., in the D.N. under Section 4(1)

and D.D. under Section 6 of the Act does not arise.

6. Further averments are made in paragraph 6 of the counter-affidavit as well and thus the specific stand taken by the first respondent that inasmuch as on the date of inspection there were no trees, the request of the petitioner cannot be considered. The report of the Special Deputy Collector (L.A.), Somasila Project, Unit-IV, Rajampet, addressed to the Special Collector, Telugu Ganga Project, Nellore, and the contents are already had been referred to supra.

7. In the light of the respective stands taken by the parties before this Court, the question, which has to be decided, is whether a positive direction may be given relating to compensation payable to the fruit bearing trees. The stand of the petitioner being that such trees had been in existence and the same being denied by the respondents.

8. Be that as it may, in the light of the facts and circumstances, especially, in view of the report in Ref.C.348/91 dated 12.8.1991 inasmuch as the existence of certain plants had been referred to in the said report, it would be just and proper to direct the second respondent to consider the grievance of the petitioner, especially, in the light of the report in Ref.C-348, dated 12.8.1991, and pass appropriate orders in this regard at the earliest point of time, preferably, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is disposed of. No

order as to costs.

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P.S.NARAYANA, J.

Date: 19th December 2006.

BSB